

BEFORE THE  
INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TIMOTHY LEROY STEADMAN

Respondent.

File No. SAC 10622-A

OAH No. N2004050337

**PROPOSED DECISION**

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on July 14, 2004.

Denise L. Yuponce, Staff Counsel, represented complainant Insurance Commissioner of the State of California.

Respondent Timothy Leroy Steadman (respondent) was present and represented himself.

The matter was submitted on July 14, 2004.

**FACTUAL FINDINGS**

1. Respondent now is, and since August 7, 1997, has been, licensed by the Insurance Commissioner to act in the capacity of a Life Agent with Registration for Variable Contracts, license number 0C10557.

2. Between in or about November, 1997, and in or about July, 2000, respondent was employed by Union Safe Deposit Bank (USDB). In or about January of 1999, he was working as a financial advisor at the bank's Modesto office. In that capacity he sold Anna Crosby, a bank customer, a United of Omaha fixed annuity in the amount of \$750,000. The

annuity contract specified a 5.15 percent guaranteed interest payment for the first three years. For the first six years of the contract period, a surrender charge would be imposed for any withdrawals exceeding ten percent of the accumulated account value. The surrender charge during each of the first three years was seven percent.

3. In or about January, 2000, Ms. Crosby withdrew \$72,889.39 from the account for the purchase of a new home. Respondent facilitated the withdrawal. After the withdrawal and payment of penalties and fees, the account balance was \$677,791.23. Thereafter, respondent and Ms. Crosby had a discussion about the possibility of earning a greater interest rate on Ms. Crosby's investment. The evidence did not establish who initiated the discussion, but respondent conceded that respondent was interested in a guaranteed rate of return. Respondent persuaded Ms. Crosby to liquidate the United of Omaha annuity and reinvest the money in a \$400,000 G.E. Capital annuity and one of the bank's investment products, a Portfolio Choice Account, which included a mix of mutual funds. Respondent did discuss the possibility of a surrender charge by United of Omaha but suggested to Ms. Crosby that it might be waived because of her medical condition. Ms. Crosby was 69 years old and suffered from Diabetes Mellitus, Type II. At the time that she discussed reinvesting her money with respondent, she was recovering from the surgical amputation of one of her legs. Ms. Crosby signed the necessary documents to make the changes.

4. United of Omaha imposed a surrender penalty of approximately \$43,000, reducing the balance to \$635,695.95 which was deposited into Ms. Crosby's USDB account. At respondent's request, Ms. Crosby signed documents for the purchase of the \$400,000 annuity and investment of the remainder in the Portfolio Choice Account. A \$221,695.95 check was drawn on her account to fund the Portfolio Choice Account investment. USDB issued both checks on or about June 26, 2000.

5. On June 20, 2000, USDB issued a \$4,000 cashier's check drawn on Ms. Crosby's account and payable to her. On June 26, 2000, two \$5,000 cashier's checks were issued by USDB drawn on Ms. Crosby's account and payable to her. Ms. Crosby had no knowledge of any of the three checks. Respondent was authorized to request issuance of checks from a client's account without the presence of the client or written authorization. The \$4,000 check was cashed at 5:24 p.m. on June 30, 2000, at Modesto Commercial Bank through back-up teller Brandi Cooper who was then respondent's fiancée. One of the \$5,000 checks was cashed at 5:17 p.m. on July 10, 2000, at the same bank through Ms. Cooper. The other \$5,000 check was cashed at 6:01 p.m. on July 20, 2000, at the same bank by Ms. Cooper. All three checks bore endorsements purportedly made by Ms. Crosby, which were forged. Ms. Crosby did not have an account with the Modesto Commercial Bank and the transactions all took place after normal bank hours. While circumstantial, the evidence clearly established that respondent, in concert with Ms. Cooper, caused the withdrawal of the three checks from Crosby's account, cashed them using forged signatures, and appropriated the funds to their own use.<sup>1</sup>

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<sup>1</sup> There was also corroborative hearsay evidence from a USDB customer service representative that the three checks were drawn upon respondent's request acting as Ms. Crosby's financial advisor.

6. Following discussions with his supervisor regarding the propriety of the liquidation of Ms. Crosby's initial annuity triggering substantial penalties and the three suspicious cashier's checks, respondent submitted a letter of resignation from USDB on July 11, 2000, effective July 25, 2000. Following respondent's resignation, USDB negotiated the reversal of the investment changes and placed Ms. Crosby's original balance back in a United of Omaha annuity. Fees and penalties were also reimbursed her.<sup>2</sup>

7. On or about October 3, 2002, in the Superior Court, County of Stanislaus, respondent was convicted upon his plea of nolo contendere of violating Penal Code section 487, subdivision (a), grand theft. The conviction was based upon charges relating to the three cashier's checks described above. Respondent was ordered to pay restitution of \$14,000. Respondent paid \$14,000 to one or both of the banks involved. The court then permitted respondent to withdraw his plea and the conviction was dismissed in the interests of justice by the court.

8. Respondent testified at the administrative hearing. He denied any involvement in the withdrawal of \$14,000 in the form of three cashier's checks from Ms. Crosby's account. Respondent acknowledged that "somehow-someway," the checks were cashed by the woman who, since December 15, 2002, has been his wife.<sup>3</sup> He suggested that his previous supervisor at USDB may have been responsible, as the supervisor knew that his then fiancée worked at Modesto Commerce Bank. Respondent did not offer any possible scenario by which the supervisor would have been able to accomplish the negotiation of the checks. Respondent's testimony regarding the three cashier's checks was not credible. Respondent testified that he did tell Ms. Crosby that any surrender penalty for liquidation of her initial annuity would likely be waived because she was disabled. He said that he relied upon his supervisor to facilitate the waiver and that the transaction had not been "completed" when he left USDB. He said that he recognized that the Portfolio Choice Account was not a good option for Ms. Crosby because it involved relatively high management fees and did not meet her "guaranteed" investment criterion. Respondent maintained that his supervisor pressured him to invest Ms. Crosby's money in the account. Respondent's testimony relating to the changes in Ms. Crosby's investments was not credible. In this regard, it is noted that the disclosure statement for Ms. Crosby's initial annuity does include a waiver provision relating to surrender charges. However, by its terms, it only applies if the investor becomes hospitalized, or confined to a nursing home or long term facility for 30 consecutive days. Thus, Ms. Crosby was not eligible for waiver of the surrender penalty.

9. Respondent is 32-years-old. He has completed approximately three years of college level courses in accounting. He has been employed for the approximately last three years by U.S. Bancorp Investments, Inc., as a vice-president/financial consultant. He opens between 200 and 350 investment accounts each year. He has not experienced any other

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<sup>2</sup> Ms. Crosby died on January 4, 2004.

<sup>3</sup> Respondent did not call his wife as a witness at the administrative hearing.

investor complaints. Respondent paid the \$14,000 restitution amount to one or both banks involved in the Crosby checks transactions.

## LEGAL CONCLUSIONS

1. Insurance Code section 1738 provides, in pertinent part:

The commissioner may suspend or revoke any permanent license issued pursuant to this chapter on any of the grounds...on which he may deny an application. Whenever in such grounds the word 'applicant' is used, such word shall for the application of this section be the words 'the holder of a permanent license.'

2. Insurance Code section 1668, subdivisions (b), (d), (e), (i), (j), (k), and (l), read:

The commissioner may deny an application for any license issued pursuant to this chapter if:

- (b) The granting of the license will be against public interest;
- (d) The applicant is not of good business reputation;
- (e) The applicant is lacking in integrity;
- (i) The applicant has previously engaged in a fraudulent practice or act or has conducted any business in a dishonest manner;
- (j) The applicant has shown incompetency or untrustworthiness in the conduct of any business, or has by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with him to the danger of loss;
- (k) The applicant has knowingly misrepresented the terms or effect of an insurance policy or contract;

(l) The applicant has failed to perform a duty expressly enjoined upon him by a provision of this code or has committed an act expressly forbidden by such a provision.

3. Insurance Code section 785, subdivision (a), reads:

(a) All insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.

4. Respondent's participation in the scheme to illegally and fraudulently appropriate \$14,000 of Ms. Crosby's funds demonstrates that respondent's retention of his license to sell insurance is against the public interest, that respondent is not of good business reputation, that respondent lacks integrity, that respondent has engaged in dishonest and fraudulent business practices, that respondent has shown untrustworthiness and has by commission of wrongful acts exposed others to loss, and that respondent has knowingly misrepresented the terms of an insurance contract. Respondent is thereby subject to discipline pursuant to Insurance Code section 1738 in conjunction with Insurance Code sections 785, subdivision (a), and 1668, subdivisions (b), (d), (e), (i), (j), and (k).

5. Respondent's failure to adequately apprise Ms. Crosby of the significant penalty associated with the surrender of her United of Omaha annuity and the inapplicability of the disability waiver demonstrate that respondent has shown incompetency in the conduct of business and a breach of the special duty of good faith and fair dealing owed an insured who is at least 65-years-old. Respondent is thereby subject to discipline pursuant to Insurance Code section 1738 in conjunction with Insurance Code sections 785, subdivision (a), and 1668, subdivisions (j) and (l).

6. The appropriate order in this matter is revocation. Respondent deliberately took advantage of an infirm senior citizen when he persuaded her to cancel her secure annuity investment, thereby triggering an enormous surrender penalty. He reinvested part of the net proceeds in equity mutual funds, contrary to her express request to maintain investments with a guaranteed return. Respondent then orchestrated the theft of \$14,000 from his client's funds by conspiring with his then fiancée to forge the client's signature on three cashier's checks and have Ms. Cooper cash them. At hearing, rather than admitting these transgressions, respondent deliberately lied under oath about his dealings with Ms. Crosby and about his involvement in the acquisition and negotiation of the three cashier's checks.

ORDER

All licenses and licensing rights issued by the California Department of Insurance to Timothy Leroy Steadman are revoked.

Dated: \_\_\_\_\_

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KARL S. ENGEMAN  
Administrative Law Judge  
Office of Administrative Hearings